

CLEO CHAPEKIS

IBLA 79-372

Decided September 14, 1981

Appeal from decision of Eastern States Office, Bureau of Land Management, rejecting oil and gas lease offer ES 16831.

Set aside and remanded.

1. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents -- Oil and Gas Leases: Applications: Drawings

Where a drawing entry card to lease a parcel of land for oil and gas was prepared by a person or corporation having discretionary authority to act on behalf of the named offeror, the requirements of 43 CFR 3102.6-1 (1979) applied, so that separate statements of interest by both the offeror and the agent were required to be filed, regardless of whether the agent signed his principal's name or his own name as his principal's agent or attorney-in-fact, and regardless of whether the signature was applied manually or mechanically.

2. Administrative Practice -- Oil and Gas Leases: Applications: Generally -- Regulations: Applicability

Where an oil and gas lease offer, unaccompanied by statements as required by D. E. Pack (On Reconsideration), 38 IBLA 23, 85 I.D. 408 (1978), was filed prior to Nov. 9, 1978, the Pack holding will not retroactively be applied to the offer.

APPEARANCES: James W. McDade, Esq., Washington, D.C., for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Cleo Chapekis appeals from a decision dated April 6, 1979, by the Eastern States Office, Bureau of Land Management (BLM), which rejected her oil and gas lease offer ES 16831, which was drawn with first priority for parcel ES 56 in the January 1977 simultaneous oil and gas leasing program. The offer was for the undivided one-half interest of the United States in secs. 4 and 5, T. 12 S., R. 4 E., Chickasaw meridian, Chickasaw County, Mississippi, within the Tombigbee National Forest.

The offer was rejected for lack of compliance with 43 CFR 3102.6-1(a)(2), which stated that if the offer is signed by an agent or attorney-in-fact on behalf of the offeror, separate statements of interest by both the offeror and the agent must be filed with BLM.

On May 10, 1978, BLM issued a decision requesting that the offeror answer certain questions relative to the preparation and signature of the lease offer ES 16831. Appellant provided the information on June 5, 1978. The information indicated that the offeror had neither selected the parcel nor affixed her own signature to the offer, but she stated it was her intent that the facsimile signature on the offer be accepted as her own signature. The offer was prepared by and filed by Stewart Capital Corporation, pursuant to an agreement entered into by Mrs. Chapekis.

In its April 6, 1979, decision BLM stated that an agency relationship was established between Mrs. Chapekis and Stewart Capital Corporation, and rejected appellant's offer to lease, stating as reason for such rejection that the statement of interest required by 43 CFR 3102.6-1(a)(2) was not filed. The decision cited, as authority, D. E. Pack (On Reconsideration), 38 IBLA 23, 85 I.D. 408 (1978), inter alia. See also Ray H. Thames, 31 IBLA 167 (1977).

This appeal followed. In appellant's statement of reasons she adopts the arguments used by the appellant in H. R. Delasco, Inc., 39 IBLA 194 (1979) and D. E. Pack (On Reconsideration), supra. The arguments have been thoroughly discussed in those decisions and no further discussion appears to be warranted.

[1] In view of the discussion in D. E. Pack (On Reconsideration), H. R. Delasco, Inc., and Ray H. Thames, supra, we see no compelling reason to depart from our holding in those decisions. As we held therein, where a drawing entry card to lease a parcel of land for oil and gas was prepared by a person or corporation having discretionary authority to act on behalf of the named offeror, and the offer was signed by such agent or attorney-in-fact, the requirements of 43 CFR 3102.6-(1) (1979) applied so that separate statements of interest by both the offeror and the agent were required to be filed, regardless of whether the signature was applied manually or mechanically. 1/

1/ We would note that under new regulations, published on May 23, 1980 (45 FR 35156 (May 23, 1980)), agency statements must be submitted for any applicant "receiving the assistance of any other person or entity which is in the business of providing assistance to participate in a Federal oil and gas lease program." 43 CFR 3102.2-6(a).

[2] Subsequent to the Board's decision in these cases, however, judicial review of the Board's ruling was sought in various United States District Courts. In Runnells v. Andrus, 484 F. Supp. (D. Utah 1980), and Stewart Capital Corp. v. Andrus, No. C 79-123K (D. Wyo. Apr. 24, 1980), appeal pending, No. 80-1642 (10th Cir.), the District Courts affirmed the substantive rulings of the Board but held that this new interpretation could only be applied prospectively. In McDonald v. Andrus, Civ. No. 577-0533(c) (D. Miss. Jan. 29, 1980), the District Court affirmed the Board's decision in Ray H. Thames, supra. Subsequently, after appeal, in McDonald v. Watt, No. 80-3155 (5th Cir. Aug. 21, 1981), the Court of Appeals reversed the District Court in Mississippi only as to its holding that the Board's decision should be retroactively applied. Recently, in Killian L. Huger, Jr., 52 IBLA 174 (1981), this Board announced that it would follow the Court decision in Runnells, supra, and Stewart Capital Corp., supra, and would accordingly not apply the Pack holdings to lease offers filed prior to November 9, 1978. In the instant case, the offer to lease was filed in January 1977. Obviously, following McDonald v. Watt, supra, the same rule should apply here. Therefore, we will follow our decision in Killian L. Huger, Jr., supra, and set aside the decision of the Eastern States Office.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case remanded for appropriate action.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Edward W. Stuebing
Administrative Judge

